New Grounds of Rejection – 35 U.S.C. §112

Claims 5-7 stand rejected under §112, second paragraph as allegedly being indefinite. According to the Examiner:

> "the word 'means' is ***preceded*** by the word(s) such as: 'for verifying', etc. in an attempt to use a 'means' clause to recite a claim element as means for performing function. However, since no function is specified by the word(s) preceding 'means,' it is impossible to determine the equivalents of the element, as required by 35 USC 112, sixth paragraph" (emphasis added). (see pg. 5 of Supplement Examiner's Answer, mailed 6/21/10, hereinafter the "Examiner's Supplemental Answer").

However, the Appellants note that there are no words or gerunds *preceding* appellants 'means' limitations in each of claims 5-7. To the contrary, all of the limitations which includes 'means' are in the format "means for _____." For example, the Appellants claims recite features such as: "means for verifying", "means for creating", "means for requesting", "means for accessing", etc. According to the MPEP, "if the phrase can be restated as 'means for _____,' and still makes sense, it is definite. [As an example], 'latch means' can be restated as 'means for latching.' This is clearly definite." (see MPEP 706.03(d), Examiner's Note under ¶7.34.11). Accordingly, since all of Appellants' "means" limitations are in the proper formal as required by MPEP 706.03(d), the Appellants submit that this grounds of rejection is improper and should accordingly, be reversed.

35 U.S.C. §103Grounds of Rejection

All 35 USC §103 grounds of rejection raised in the Examiner's Supplemental Answer were previously raised, and have all been addressed in Appellants' Appeal Brief of Aug. 18, 2009 (*see* pgs. 12-20).

(10) Response to Arguments

In response to the Examiner's Response to Arguments, the Appellants refer to the arguments already made in Appellants' Appeal Brief of 8/18/09, which arguments are incorporated herein.

Moreover, the Appellants acknowledge that they may have inadvertently failed to properly underline a claim amendment made in Appellants' 12/4/08 Response. However, the Appellants note that prior to filing the 12/4/08 Response, all proposed amendments were discussed in great detail with the Examiner during several telephone conferences (e.g., on Oct. 14, 2008 and Dec. 1, 2008). In addition, prior to the 12/1/08 telephone conference, the Appellants faxed a draft version of its 12/4/08 Response to the Examiner. Notably, this draft version included all proposed claim amendments. Thus, even if the Appellants inadvertently failed to properly underline an added limitation, the Examiner was well aware of any and all claim limitations being incorporated into the claims. More importantly, given the number and extent of discussions held between Appellants and the Examiner, it is clear that the Appellants' apparent error was not intended to deceive or trick the Examiner. To the contrary, the error was an inadvertent clerical mistake.

Respectfully submitted,

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